
TITLE 326 AIR POLLUTION CONTROL DIVISION**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #11-747

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING MINOR NEW SOURCE REVIEW AIR PERMITTING REGULATIONS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 2-7](#) and [326 IAC 2-8](#) concerning Indiana's air permitting regulations and minor new source review (NSR) requirements for Title V and Federally Enforceable State Operating Permit (FESOP) sources. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: December 21, 2011, Indiana Register (DIN: [20111221-IR-326110747FNA](#)).

CITATIONS AFFECTED: [326 IAC 2-7-10.5](#); [326 IAC 2-8-11.1](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

The United States Environmental Protection Agency (U.S. EPA) has the authority to delegate implementation of many of the Clean Air Act (CAA) requirements to individual states. Indiana's air permitting regulations are codified in Title 326, Article 2 of the Indiana Administrative Code (IAC). In Indiana, persons or businesses planning to construct a new facility, expand an existing facility, operate a facility, or carry out an activity that will emit one or more regulated pollutants into the air will generally need some level of air permit for construction and operation. In most cases, IDEM has combined the construction and operating permit programs and issues a single document that serves as both the construction and operating permit. IDEM's preconstruction approval process is called New Source Review (NSR).

Permitted sources may add to or modify their existing operations. However, unless the changes or modifications are by themselves exempt, the source may need to apply for preconstruction approval and go through NSR. Under Indiana's NSR regulations, for any type of preconstruction approval, IDEM will review applicable requirements for the new or modified source of air emissions. There are two categories of NSR, major and minor. Major NSR is triggered when the proposed construction will be subject to IDEM's prevention of significant deterioration (PSD) regulations at [326 IAC 2-2](#) or emission offset regulations at [326 IAC 2-3](#). Minor NSR is used when the construction or modification project does not trigger the more stringent PSD or emission offset requirements. The purpose of the minor NSR program is to ensure that the source is aware of all of the air permitting requirements prior to starting construction. Under the CAA, Indiana is required to have a minor NSR program as part of the state implementation plan (SIP). However, Indiana has the authority to customize the state's minor NSR regulations for the state's purposes, as long as state regulations meet the minimum federal requirements.

On February 3, 1999, IDEM submitted amendments to U.S. EPA concerning Indiana's existing minor NSR SIP rules for approval into the SIP. U.S. EPA identified several issues with Indiana's minor NSR rules concerning instances where preconstruction approval may be granted without the appropriate amount of public notice. In this rulemaking IDEM is proposing to make revisions to Indiana's minor NSR regulations for the Title V permit program at [326 IAC 2-7](#) and FESOP program [326 IAC 2-8](#) to address U.S. EPA concerns.

Specifically, IDEM is proposing to amend [326 IAC 2-7-10.5](#) and [326 IAC 2-8-11.1](#) to limit minor modifications to those that have a potential to emit regulated pollutants of less than 25 tons per year. This threshold is based on the threshold that was previously part of [326 IAC 2-1-1](#) before it was repealed in 1998 (LSA Document #98-95) and replaced with the provisions for Title V sources at [326 IAC 2-7-10.5](#) and for FESOP sources at [326 IAC 2-8-11.1](#). All modifications for which the potential to emit carbon monoxide (CO) is greater or equal to 25 tons per year will be processed as significant modifications. Also, the current language at [326 IAC 2-7-10.5\(e\)\(3\)\(E\)](#) and [326 IAC 2-7-10.5\(g\)\(3\)](#) for lead is inconsistent, and IDEM is proposing to amend the threshold for lead in clause (E) to reflect the one ton per year threshold for major modifications that currently exists under subsection (g)(3). Therefore, some modifications will no longer be processed under the minor modification procedures of subsection (f) and will follow the major modification procedures under subsection (h) where public notice is required.

IDEM is also proposing to modify the language at [326 IAC 2-7-10.5\(k\)](#) and [326 IAC 2-7-10.5\(m\)](#) to make it clear that source modifications for consent decree provisions must go through public notice provisions under [326](#)

[IAC 2-1.1-6](#) and be incorporated into the Title V permit using the administrative amendment procedures under [326 IAC 2-7-11](#). Consent decree provisions can be made permanent and federally enforceable through a construction permit due to an amendment to [326 IAC 2-7-10.5](#) in a recent rulemaking (LSA Document #09-493).

IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking. Upon completion, these amendments will be submitted to U.S. EPA for SIP approval.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

Some projects that would previously have been a minor source modification may now be considered a significant source modification. Significant source modifications have a higher fee than minor source modifications. In 2011, IDEM issued 26 Title V minor source modifications (MSM) and 11 FESOP minor permit revisions (MPR). Also, some sources may not be able to construct or modify emission units in advance of receiving approval from the department to construct and operate per the modification.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rule Development Section, Office of Legal Counsel at (317) 233-5697 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from December 21, 2011, through January 20, 2012, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #11-747 Minor NSR
Susan Bem Mail Code 61-49
Rule Development Section
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-8903.

- (3) By electronic mail to sbem@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the email address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than March 8, 2013. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Susan Bem, Rule Development Section, Office of Legal Counsel, (317) 233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 2-7-10.5](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-7-10.5](#) Part 70 permits; source modifications

Authority: [IC 13-14-8](#); [IC 13-15-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Sec. 10.5. (a) An owner or operator of a Part 70 source proposing to:

- (1) construct new emission units;
- (2) modify existing emission units; or
- (3) otherwise modify the source as described in this section;

shall submit a request for a modification approval in accordance with this section.

(b) In addition to the request for modification approval in subsection (a), the commissioner may issue a source modification for the purpose of incorporating the control requirements and emission limitations that are set forth in a:

(1) final federal district court order that adjudicates violations of:

- (A) the prevention of significant deterioration provisions under Sections 160 through 169B of the CAA (42 U.S.C. 7470 through 42 U.S.C. 7492);
- (B) the nonattainment new source review requirements under Sections 171 through 193 of the CAA (42 U.S.C. 7501 through 42 U.S.C. 7515);
- (C) Section 112(g) and 112(j) of the CAA (42 U.S.C. 7412(g) and 42 U.S.C. 7412(j));
- (D) [326 IAC 2-2](#);
- (E) [326 IAC 2-3](#); or
- (F) [326 IAC 20](#); or

(2) federal consent decree that is entered into for the purpose of resolving alleged violations of:

- (A) the prevention of significant deterioration provisions under Sections 160 through 169B of the CAA (42 U.S.C. 7470 through 42 U.S.C. 7492);
- (B) the nonattainment new source review requirements under Sections 171 through 193 of the CAA (42 U.S.C. 7501 through 42 U.S.C. 7515);
- (C) Section 112(g) and 112(j) of the CAA (42 U.S.C. 7412(g) and 42 U.S.C. 7412(j));
- (D) [326 IAC 2-2](#);
- (E) [326 IAC 2-3](#); or
- (F) [326 IAC 20](#).

(c) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof without prior approval if the repair or replacement:

- (1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;
- (2) is not a major modification under [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#); and
- (3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a modification approval or operating permit ~~revision~~ **modification** under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit ~~revision~~ **modification** to the commissioner not later than thirty (30) calendar days after initiating the repair or replacement.

(d) Any person proposing to make a modification described in subsection (e) or (g) shall submit an application to the commissioner concerning the modification as follows:

(1) If only preconstruction approval is requested, the application shall contain the following information:

- (A) The company name and address.
- (B) The following descriptive information:
 - (i) A description of the nature and location of the proposed construction or modification.
 - (ii) The design capacity and typical operating schedule of the proposed construction or modification.
 - (iii) A description of the following:
 - (AA) The source and the emissions unit or units comprising the source.
 - (BB) Any proposed emission control equipment, including design specifications.
- (C) A schedule for proposed construction or modification of the source.
- (D) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the

CAA, the ambient air quality standards set forth in [326 IAC 1-3](#), or the prevention of significant deterioration maximum allowable increase under [326 IAC 2-2](#):

(i) Information on the nature and amount of the pollutant to be emitted, including an estimate of the potential to emit any regulated air pollutants.

(ii) Estimates of offset credits, as required under [326 IAC 2-3](#), for sources to be constructed in nonattainment areas.

(iii) Any other information, including, but not limited to, the air quality impact, determined by the commissioner to be necessary to reasonably demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(E) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes the following:

(i) An acknowledgment that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA.

(ii) Affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(2) If the source requests that the preconstruction approval and operating permit revision be combined, the application shall contain the information in subdivision (1) and the following information consistent with section 4(c) of this rule:

(A) An identification of the applicable requirements to which the source will be subject as a result of the modification, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.

(B) A description of the Part 70 permit terms and conditions that will apply to the modification and that are consistent with sections 5 and 6 of this rule.

(C) A schedule of compliance, if applicable.

(D) A statement describing what the compliance status of the modification will be after construction has been completed consistent with section 4(c)(10) of this rule.

(E) A certification consistent with section 4(f) of this rule.

(e) The following minor modifications shall be processed in accordance with subsection (f):

~~(1) Modifications that would reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.~~

~~(2) The addition of a portable source or relocation of a portable source to an existing source if the addition or relocation would require a change to any permit terms or conditions.~~

~~(3) (1) Modifications that would have a potential to emit within any of the following ranges:~~

~~(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either PM, PM₁₀, or direct PM_{2.5}.~~

~~(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:~~

~~(i) Sulfur dioxide (SO₂).~~

~~(ii) Nitrogen oxides (NO_x).~~

~~(iii) VOC for modifications that are not described in clause (C).~~

~~(C) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of VOC for modifications that require the use of air pollution control equipment to comply with the applicable provisions of [326 IAC 8](#).~~

~~(D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).~~

~~(E) (D) Less than five (5) tons one (1) ton per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).~~

~~(F) (E) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:~~

~~(i) Hydrogen sulfide (H₂S).~~

~~(ii) Total reduced sulfur (TRS).~~

~~(iii) Reduced sulfur compounds.~~

~~(iv) Fluorides.~~

~~(4) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than HAPs, ten (10) tons per year of any single HAP as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of HAPs by complying with one (1) of the following constraints:~~

- (A) Limiting total annual solvent usage or maximum VOC content, or both.
 - (B) Limiting annual hours of operation of the process or business.
 - (C) Using a particulate air pollution control device as follows:
 - (i) Achieving and maintaining ninety-nine percent (99%) efficiency.
 - (ii) Complying with a no visible emission standard.
 - (iii) The potential to emit before controls does not exceed major source thresholds for federal permitting programs.
 - (iv) Certifying to the commissioner that the control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of PM, or fifteen (15) tons per year of PM₁₀, or direct PM_{2.5}.
 - (D) Limiting individual fuel usage and fuel type for a combustion source.
 - (E) Limiting raw material throughput or sulfur content of raw materials, or both.
- (5) A modification that is subject to a RACT, a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR Part 63, Subpart B, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (d), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.
- (6) A change for which a source requests an emission limit to avoid [326 IAC 8-1-6](#).
- (7) A modification of an existing source that has a potential to emit greater than the thresholds under subdivision (3) if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:
- (A) results in the replacement or repair of an entire process;
 - (B) qualifies as a reconstruction of an entire process;
 - (C) may result in an increase of actual emissions; or
 - (D) would result in a net emissions increase greater than the significant levels in [326 IAC 2-2](#) or [326 IAC 2-3](#).
- (8) A modification that has a potential to emit greater than the thresholds under subdivision (3) that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in [326 IAC 2-2](#) or [326 IAC 2-3](#).
- (9) **(2)** For a source in Lake County or Porter County with the potential to emit twenty-five (25) tons per year of either VOC or NO_x, any modification that would result in an increase of either in emissions of either pollutant of greater than or equal to the following:
- (A) Fifteen (15) pounds per day of VOCs.
 - (B) Twenty-five (25) pounds per day of NO_x.
- (f) Minor modification approval procedures for modifications described under subsection (d) **(e)** are as follows:
- (1) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has approved the modification request.
 - (2) Within forty-five (45) calendar days from receipt of an application for a modification described under subsection (e), the commissioner shall do one (1) of the following:
 - (A) Approve the modification request.
 - (B) Deny the modification request.
 - (C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards would allow for an increase in emissions greater than the thresholds in subsection (g) or would not provide for compliance monitoring consistent with this rule and should be processed under subsection (h).
 - (3) The source may begin construction as follows:
 - (A) If the source has a final Part 70 permit and only requests preconstruction approval or if the source does not have a final Part 70 permit, the source may begin construction upon approval by the commissioner. Notwithstanding [IC 13-15-5](#), the commissioner's approval shall become effective immediately. Operation of the modification shall be as follows:
 - (i) For a source that has a final Part 70 permit, operation of the modification may commence in accordance with section 12 of this rule.
 - (ii) For a source without a final Part 70 permit, operation may begin after construction is completed.
 - (B) If the source requests that the preconstruction approval and operating permit revision be combined, the source may begin construction upon approval and operation may begin in accordance with section 12 of this rule.

- (g) The following significant modifications shall be processed in accordance with subsection (h):
- (1) Any modification that is subject to [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#).
 - (2) A modification that is subject to [326 IAC 8-1-6](#).
 - (3) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.
 - (4) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of any of the following pollutants:
 - (A) PM, PM₁₀, or direct PM_{2.5}.
 - (B) Sulfur dioxide (SO₂).
 - (C) Nitrogen oxides (NO_x).
 - (D) VOC.
 - (E) Hydrogen sulfide (H₂S).
 - (F) Total reduced sulfur (TRS).
 - (G) Reduced sulfur compounds.
 - (H) Fluorides.
 - (5) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.
 - (6) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single HAP as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of HAPs.
 - (7) Any modification with a potential to emit greater than or equal to ~~one hundred (100)~~ **twenty-five (25)** tons per year of carbon monoxide (CO).

(h) The following shall apply to the significant modifications described in subsection (g):

- (1) Any person proposing to make a modification described in subsection (g) shall:
 - (A) submit an application concerning the modification; and
 - (B) include the information under subsection (d).
- (2) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has issued a modification approval.
- (3) The commissioner shall approve or deny the modification as follows:
 - (A) Within one hundred twenty (120) calendar days from receipt of an application for a modification in subsection (g) except subsection (g)(1).
 - (B) Within two hundred seventy (270) calendar days from receipt of an application for a modification under subsection (g)(1).
- (4) A modification approval under this subsection may be issued only if all of the following conditions have been met:
 - (A) The commissioner has received a complete application for a modification.
 - (B) The commissioner has complied with the requirements for public notice as follows:
 - (i) For modifications for which a source is only requesting preconstruction approval, the commissioner has complied with the requirements under [326 IAC 2-1.1-6](#).
 - (ii) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the commissioner has complied with the requirements under section 17 of this rule.
 - (C) The conditions of the modification approval provide for compliance with all applicable requirements and this rule.
 - (D) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the U.S. EPA has received a copy of the proposed modification approval and any notices required and has not objected to the issuance of the modification approval within the time period specified in section 18 of this rule.
- (5) The commissioner shall do the following:
 - (A) Provide a technical support document that sets forth the legal and factual basis for draft modification approval conditions, including references to the applicable statutory and regulatory provisions.
 - (B) Send this technical support document to:
 - (i) the U.S. EPA;
 - (ii) the applicant; and
 - (iii) any other person who requests it.

(i) The following shall apply to a modification approval described in subsection (g) for a source that has not received a final Part 70 permit:

- (1) After receiving an approval to construct and prior to receiving approval to operate, a source shall prepare an affidavit of construction as follows:
 - (A) The affidavit shall include the following:
 - (i) The name and title of the authorized individual.

(ii) The company name.

(iii) Subject to item (iv), an affirmation that the emissions units described in the modification approval: (AA) were constructed in conformance with the request for modification approval; and (BB) will comply with the modification approval.

(iv) Identification of any changes to emissions units not included in the request for modification approval, but which should have been included under subsection (a).

(v) The signature of the authorized individual.

(B) The affidavit shall be notarized.

(C) A source shall submit the affidavit to the commissioner either after construction of all the emission units described in the modification approval or after each phase of construction of the emission units described in the modification approval, as applicable, has been completed.

(2) A source may not operate any emissions units described in the modification approval prior to receiving a validation letter issued by the commissioner, except as provided in the following:

(A) A source may operate the emissions units covered by the affirmation in the affidavit of construction upon submission of the affidavit of construction.

(B) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.

(C) The validation letter shall authorize the operation of all or part of each emissions unit covered by the affirmation in the affidavit of construction.

(D) Subject to clause (E), the validation letter shall include any amendments to the modification approval if the amendment is requested by the source and if the amendment does not constitute a modification and require public notice and comment under [326 IAC 2-1.1-6](#).

(E) A validation letter shall not approve the operation of any emissions unit if an amendment to the modification approval requested by the source would constitute a modification and require public notice and comment under [326 IAC 2-1.1-6](#).

(j) Each modification approval issued under this rule shall provide that construction must commence within eighteen (18) months of the issuance of the modification approval.

(k) All modification approval proceedings under this section shall provide adequate procedures for public notice, including offering an opportunity for public comment and a hearing on the draft modification approval **for significant modifications** as established in [326 IAC 2-1.1-6](#) or section 17 of this rule. **Modifications for the purpose of incorporating the control requirements and emission limitations of a final federal district court order or federal consent decree under subsection (b) shall follow procedures for public notice as established in [326 IAC 2-1.1-6](#).**

(l) The commissioner shall provide for review by the U.S. EPA and affected states of each:

(1) modification application;

(2) draft modification approval;

(3) proposed modification approval; and

(4) final modification approval;

in accordance with the procedures established in section 18 of this rule for modifications that a source is requesting a combined preconstruction approval and operating permit revision.

(m) A modification approval issued in accordance with this section shall be incorporated into the source's Part 70 permit or permit application as follows:

(1) For a source that has a final Part 70 permit and requested that the preconstruction approval and permit revision be combined, the modification approval shall be incorporated into the Part 70 permit as an administrative amendment in accordance with section 11 of this rule.

(2) For a source that has a final Part 70 permit and requested only a preconstruction approval, the source may begin operation in accordance with section 12 of this rule.

(3) For a source that has a complete Part 70 permit application on file, but does not have a final Part 70 permit and requested only preconstruction approval, the modification approval:

(A) shall be deemed incorporated in the Part 70 permit application; and

(B) will be included in the Part 70 permit when issued.

(4) For a source that has a final Part 70 permit and requested a modification under subsection (b), the modification approval shall be incorporated into the Part 70 permit as an administrative amendment in accordance with section 11 of this rule.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 400 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 2-7-10.5](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1039; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Oct 23, 2000, 9:47 a.m.: 24 IR 672; filed May 21, 2002, 10:20 a.m.: 25 IR 3065; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3947; errata filed Jul 23, 2007, 4:19 p.m.: [20070815-IR-326070466ACA](#); filed Oct 1, 2010, 3:48 p.m.: [20101027-IR-326070372FRA](#); filed Feb 6, 2012, 2:54 p.m.: [20120307-IR-326090493FRA](#); filed Jun 11, 2012, 3:15 p.m.: [20120711-IR-326110251FRA](#))

SECTION 2. [326 IAC 2-8-11.1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-8-11.1](#) Permit revisions

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15-5](#); [IC 13-17](#)

Sec. 11.1. (a) Any person proposing to add additional emission units, modify existing emission units, or otherwise modify a FESOP source as described in this section shall submit a permit revision request in accordance with this section.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment, or components thereof, without prior approval, if the repair or replacement:

- (1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit for the equipment or the affected emissions unit that was repaired or replaced;
- (2) is not a major modification under [326 IAC 2-2-1](#), [326 IAC 2-3-1](#), or [326 IAC 2-4-1](#); and
- (3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner not later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application required under this section shall meet the requirements of section 3(c) of this rule and include the following information:

- (1) The company name and address.
- (2) A description of the change and the emissions resulting from the change.
- (3) An identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.
- (4) Proposed permit terms and conditions required to implement the change, including limitations and methods to be used to comply with the limitations for modifications described in subsection (d)(4).
- (5) A schedule of compliance, if applicable.
- (6) A certification consistent with section 3(d) of this rule.

(d) The following modifications **that have a potential to emit within the following ranges** shall require minor permit revisions and shall require approval prior to construction and operation:

- ~~(1) Modifications that reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.~~
- ~~(2) The addition of a portable source or relocation of a portable source to an existing source, if the addition or relocation would require a change to any permit terms or conditions.~~
- ~~(3) Modifications that would have a potential to emit within the following ranges:~~
 - ~~(A) (1) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either PM, PM₁₀, or direct PM_{2.5}.~~
 - ~~(B) (2) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of sulfur~~

dioxide (SO₂).

~~(G) (3)~~ Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of nitrogen oxides (NO_x).

~~(D) (4)~~ Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of VOC for modifications that are not described in clause (E).

~~(E) (5)~~ Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of VOC for modifications that require the use of air pollution control equipment to comply with the applicable provisions of [326 IAC 8](#).

~~(F) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).~~

~~(G) (6)~~ Less than five ~~(5) tons~~ **one (1) ton** per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

~~(H) (7)~~ Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

~~(i) (A)~~ Hydrogen sulfide (H₂S).

~~(ii) (B)~~ Total reduced sulfur (TRS).

~~(iii) (C)~~ Reduced sulfur compounds.

~~(iv) (D)~~ Fluorides.

~~(4) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than HAPs, ten (10) tons per year of any single HAP as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of HAPs by complying with one (1) of the following constraints:~~

~~(A) Limiting total annual solvent usage or maximum VOC content, or both.~~

~~(B) Limiting annual hours of operation of the process or business.~~

~~(C) Using a particulate air pollution control device as follows:~~

~~(i) Achieving and maintaining ninety-nine percent (99%) efficiency.~~

~~(ii) Complying with a no visible emission standard.~~

~~(iii) The potential to emit before air pollution controls does not exceed major source thresholds for federal permitting programs.~~

~~(iv) Certifying to the commissioner that the air pollution control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of PM, or fifteen (15) tons per year of PM₁₀ or direct PM_{2.5}.~~

~~(D) Limiting individual fuel usage and fuel type for a combustion source.~~

~~(E) Limiting raw material throughput or sulfur content of raw materials, or both.~~

~~(5) A change that is not described under section 10(a)(15) or 10(a)(16) of this rule and is subject to a RACT, a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.~~

~~(6) A modification for which a source requests an emission limit to avoid [326 IAC 8-1-6](#).~~

(e) Minor permit revision procedures shall be as follows:

(1) Any person proposing to make a change described in subsection (d) shall:

(A) submit an application concerning the change; and

(B) include the information under subsection (c).

(2) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the change until the commissioner has revised the permit.

(3) Within forty-five (45) calendar days from receipt of an application for a minor permit revision, the commissioner shall either:

(A) approve the minor permit revision request;

(B) deny the minor permit revision; or

(C) determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards, would allow for an increase in emissions greater than the thresholds in subsection (f), or would not provide for compliance monitoring consistent with this rule and should be processed as a significant permit revision.

(4) If approved, the permit shall be revised by incorporating the minor permit revision into the permit. The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the minor permit revision to the permit. The commissioner shall do the following:

(A) Notify the permittee upon incorporation of the minor permit revision to the permit.

(B) Provide a copy of the minor permit revision to the permittee.

Notwithstanding [IC 13-15-5](#), the commissioner's decision shall become effective immediately.

(f) Significant permit revision procedures are as follows:

(1) A significant permit revision is a modification that is not an administrative amendment under section 10 of this rule or subject to subsection (d) and includes the following:

(A) Any modification that would be subject to [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#).

(B) Any modification that results in the source needing to obtain a Part 70 permit under [326 IAC 2-7](#).

(C) A modification that is subject to [326 IAC 8-1-6](#).

(D) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(E) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of the following pollutants:

(i) PM, PM₁₀, or direct PM_{2.5}.

(ii) Sulfur dioxide (SO₂).

(iii) Nitrogen oxides (NO_x).

(iv) VOC.

(v) Hydrogen sulfide (H₂S).

(vi) Total reduced sulfur (TRS).

(vii) Reduced sulfur compounds.

(viii) Fluorides.

(F) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(G) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single HAP as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of HAPs.

(H) Any modification with a potential to emit greater than or equal to ~~one hundred (100)~~ **twenty-five (25)** tons per year of carbon monoxide (CO).

(I) Any modification that removes or reduces compliance monitoring, testing, record keeping, reporting, or its frequency.

(2) The following conditions shall apply to significant permit revisions:

(A) Any person proposing to make a modification described in this subsection shall:

(i) submit an application concerning the modification; and

(ii) include the information under subsection (c).

(B) The commissioner shall provide a copy of the significant permit revision application and draft and final operating permit revision to the U.S. EPA.

(C) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the change until the commissioner has revised the permit.

(D) The commissioner shall provide for public notice and comment in accordance with section 13 of this rule.

(E) The commissioner shall approve or deny the significant permit revision as follows:

(i) Within one hundred twenty (120) calendar days from receipt of an application for a significant permit revision, except for a significant permit revision under subdivision (1)(A).

(ii) Within two hundred seventy (270) calendar days from receipt of an application for a significant permit revision under subdivision (1)(A).

(F) If approved, the permit shall be revised by incorporating the significant permit revision into the permit.

The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the significant permit revision to the permit.

(g) Notwithstanding a permit requirement for emissions to remain below major source thresholds under Part 70 in [326 IAC 2-7](#), PSD in [326 IAC 2-2](#), or emission offset in [326 IAC 2-3](#), any modifications that require an adjustment to the FESOP emission limitations shall be required to be reviewed in accordance with the procedures in subsection (f).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 400 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 2-8-11.1](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1055; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed May 21, 2002, 10:20 a.m.: 25 IR 3072; errata filed Jul 23, 2007, 4:19 p.m.:

[20070815-IR-326070466ACA](#); filed Oct 1, 2010, 3:48 p.m.: [20101027-IR-326070372FRA](#); filed Feb 6, 2012, 2:54 p.m.: [20120307-IR-326090493FRA](#); filed Jun 11, 2012, 3:15 p.m.: [20120711-IR-326110251FRA](#))

[Notice of Public Hearing](#)

Posted: 02/06/2013 by Legislative Services Agency
An [html](#) version of this document.